

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

VICTOR J. BLACK, ID # 1686499, §  
§  
Petitioner, § § Civil Action No. 3:13-CV-0892-D  
VS. §  
§  
THE STATE, §  
§  
Respondent. §

**ORDER**

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct as set forth below. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted as follows.\* Accordingly, this habeas case is dismissed without prejudice for lack of subject matter jurisdiction by judgment filed today.

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. To the extent adopted in this order, the court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists

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\*In the magistrate judge's findings, conclusions, and recommendation, she recommends that the court dismiss the case for lack of jurisdiction unless the petitioner either files a motion to proceed *in forma pauperis* or pays the filing fee and submits a habeas petition on the appropriate form. Because the court lacks subject matter jurisdiction, however, it declines to await this proposed process—which appears to relate to dismissal for want of prosecution—before dismissing the case.

would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S.473, 484 (2000). If petitioner files a notice of appeal, he must pay the appellate filing fee or submit a motion to proceed *in forma pauperis*.

**SO ORDERED.**

April 24, 2013.

  
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SIDNEY A. FITZWATER  
CHIEF JUDGE